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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIFTH APPELLATE DISTRICT**

ANTHONY B.,

Petitioner,

v.

THE SUPERIOR COURT OF KERN COUNTY,

Respondent;

KERN COUNTY DEPARTMENT OF HUMAN  
SERVICES,

Real Party in Interest.

F078157

(Super. Ct. Nos. JD138664-00,  
JD138665-00, JD138666-00)

**OPINION**

**THE COURT\***

ORIGINAL PROCEEDINGS; petition for extraordinary writ review. Lorna H. Brumfield, Judge.

Anthony B. in pro. per., for Petitioner.

No appearance for Respondent.

Mark L. Nations and Margo A. Raison, County Counsel, and Carissa A. Rarick, Deputy County Counsel, for Real Party in Interest.

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\* Before Poochigian, Acting P.J., Meehan, J. and Snauffer, J.

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On September 25, 2018, the juvenile court denied Anthony B. (father) and M.H. (mother), parents of now 14-year-old J.B., 12-year-old Felicity B. and 11-year-old Vanessa B., reunification services (Welf. & Inst. Code, § 361.5, subd. (b)(3))<sup>1</sup> and set a section 366.26 hearing for January 23, 2019. Father in propria persona seeks an extraordinary writ directing the juvenile court to return the children to his custody and terminate its dependency jurisdiction or order reunification services. Mother did not challenge the court's orders. Because substantial evidence supports the juvenile court's ruling, we deny father's petition.

### **PROCEDURAL AND FACTUAL SUMMARY**

Father and mother have an extensive child welfare history dating back to 2004, involving child abuse and neglect and domestic violence in multiple counties. Despite receiving ongoing referrals over the years, Child Protective Services (CPS) was unable to substantiate the abuse until August 2014, when father grabbed and twisted nine-year-old J.B.'s arm and hand, injuring her finger, punched her in the stomach with his fist and pinched and slapped her. Father later taped and splinted J.B.'s finger with a popsicle stick and told J.B. to lie to the school and emergency room staff about the cause of her injury. Eight-year-old Felicity stated she had a scar on her back from father striking her and the children observed him choke their mother and shove a stick in her throat.

The Yuba County Juvenile Court sustained the abuse allegations under section 300, subdivisions (a) and (b) in October 2014 and ordered father to participate in individual counseling and anger management and both parents to participate in couples counseling and family therapy. The court ordered mother to participate in individual therapy to address her mental health conditions, which included bipolar disorder. In March 2016, the court returned the children to parental custody under family

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<sup>1</sup> Statutory references are to the Welfare and Institutions Code.

maintenance services and the following September terminated its dependency jurisdiction.

These dependency proceedings were initiated in Kern County after then 13-year-old J.B. reported that father physically abused her at the family home. She and father were in an argument over mother, who had become transient and did not spend much time at home. J.B. said father slapped her and punched her multiple times on the stomach, arms and legs and shoved her into the wall multiple times. She had recent bruising on the inside of her right bicep and outer right knee and a bruise on her outer right thigh that appeared to be healing. She also said father regularly called her “bitch, slut, whore, motherf\*\*\*\*\*.” Father was arrested and transported to county jail.

The Kern County Department of Human Services (department) took J.B., 12-year-old Felicity and 11-year-old Vanessa into protective custody and filed a dependency petition on their behalf alleging under section 300, subdivisions (a) and (b) that father physically abused them, and mother failed to protect them from it. The department placed the sisters together in foster care.

In July 2018, following a contested jurisdictional hearing at which both parents testified, the juvenile court found the allegations true and adjudged the children dependents under section 300, subdivisions (a) and (b).

On September 25, 2018, the juvenile court convened a contested dispositional hearing on the department’s recommendation to deny both parents reunification services under section 361.5, subdivision (b)(3), based on the necessity to remove the children from parental custody twice for physical abuse. Both parents were present in court and their attorneys made offers of proof which were accepted. Father represented that he completed aggression replacement training and learned how to control his emotions and deescalate situations. In parenting class, he learned to handle conflict with his children without getting angry. Father’s attorney argued for reunification services for all the children or alternatively with Felicity and Vanessa. He pointed to evidence father

completed aggression replacement training and referred to the certificate of completion, which he submitted to the court. He also submitted child guidance progress reports for June, July, and August reflecting his participation in the class as well as a parent support group. Father was scheduled to complete the parenting class in October. Mother's attorney also argued for reunification services, pointing out that father was the perpetrator of family violence, mother separated from him on September 16, she visited the children and they were bonded to her, she was trying to rectify the family situation, and the children were not likely to be adopted.

The juvenile court denied the parents reunification services as recommended and set a section 366.26 hearing. In ruling, the court noted the lengthy CPS involvement with the family and father's unchanging behavior despite extensive services. The court believed father was making progress but noted abusive qualities in his recent interaction with the children and did not want to risk returning them to an abusive situation in their formative years.

## **DISCUSSION**

### *The Petition Is Inadequate*

A writ petition to review an order setting a section 366.26 hearing must include, among other things, a memorandum that summarizes the significant facts supporting the petition, relates the facts to the grounds alleged as error, and supports each point with argument and citation to authority and the record. (Cal. Rules of Court, rule 8.452(a), (b); *Glen C. v. Superior Court* (2000) 78 Cal.App.4th 570, 583.) A petition that fails to comply with these requirements may be dismissed. (*Cheryl S. v. Superior Court* (1996) 51 Cal.App.4th 1000, 1005.)

In his petition, father contends the juvenile court's ruling was based on "fabricated" and "misleading" evidence. He claims his attorney did not act in "good faith," did not represent him as he requested, and told him to "be quiet" and "say nothing." He does not, however, support his position with citations to the record and to

legal authority. Consequently, his petition is subject to dismissal for failure to comply with California Rules of Court, rule 8.452. We are aware, however, that reviewing courts should liberally construe such petitions to reach the merits when reasonably possible in light of the importance of the rights at stake and the critical state of the proceedings. (§ 366.26, subd. (l)(4)(B); see *Steve J. v. Superior Court* (1995) 35 Cal.App.4th 798, 806-807.) Therefore, we will liberally construe father's petition as raising a claim of ineffective assistance of counsel.

*Trial Counsel Was Not Ineffective*

A parent claiming ineffective assistance of counsel must show that his or her attorney "failed to act in a manner to be expected of reasonably competent attorneys practicing in the field of juvenile dependency law" and that the "claimed error was prejudicial." (*In re Kristin H.* (1996) 46 Cal.App.4th 1635, 1667-1668.) Father does not specify the evidence he claims was "fabricated" and "misleading." However, in order to deny a parent reunification services, the juvenile court first has to find by a preponderance of the evidence that the child is described by one of the subdivisions of section 300 and, by clear and convincing evidence that the parent is described by one of the subparts of section 361.5, subdivision (b). On review, as to both findings, we apply the substantial evidence test. (*In re Heather A.* (1996) 52 Cal.App.4th 183, 193.)

Here, the juvenile court found the children were described under subdivisions (a) and (b) of section 300. We may affirm the juvenile court's finding of jurisdiction over the child if any one of the statutory bases for jurisdiction that are enumerated in the petition is supported by substantial evidence. (*In re Alexis E.* (2009) 171 Cal.App.4th 438, 451.)

We conclude the evidence supports juvenile court jurisdiction under section 300, subdivision (a), which applies where the child "has suffered, or there is a substantial risk that the child will suffer, serious physical harm inflicted nonaccidentally upon the child by the child's parent or guardian. For purposes of this subdivision, a court may find there

is a substantial risk of serious future injury based on the manner in which a less serious injury was inflicted, a history of repeated inflictions of injuries on the child or the child's siblings, or a combination of these and other actions by the parent or guardian that indicate the child is at risk of serious physical harm.”

The juvenile court had evidence that father physically abused J.B. in May 2018, by hitting and punching her and shoving her into the wall, resulting in bruises on various parts of her body. There was also evidence that father had been abusing J.B. and her siblings for years. Given the evidence, there was nothing father's attorney could have presented that would have persuaded the juvenile court not to adjudge the children dependents described by section 300, subdivision (a).

Similarly, there was nothing father's attorney could have presented to dissuade the juvenile court from applying section 361.5, subdivision (b)(3), which authorizes the court to deny a parent reunification services if “the child or a sibling of the child has been previously adjudicated a dependent pursuant to any subdivision of Section 300 as a result of [physical abuse], that following that adjudication the child had been removed from the custody of his or her parent ... that the child has been returned to the custody of the parent ... from whom the child had been taken originally, and that the child is being removed ..., due to additional [physical abuse].” The undisputed evidence was that the children were removed from father's custody in 2014 because of physical abuse, returned to his custody in 2016, and removed again in 2018 for the same reason.

We conclude substantial evidence supports the juvenile court's jurisdictional findings and denial of services order. Thus, any claim father asserts of ineffective assistance of counsel fails for lack of prejudice.

### **DISPOSITION**

The petition for extraordinary writ is denied. This court's opinion is final forthwith as to this court pursuant to California Rules of Court, rule 8.490(b)(2)(A).